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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 IN RE: Bard IVC Filters Products Liability
10 Litigation,

No. MDL 15-02641-PHX-DGC

11 Sherr-Una Booker, an individual,
12 Plaintiff,

No. CV-16-00474-PHX-DGC

13 v.

ORDER

14 C. R. Bard, Inc., a New Jersey corporation;
15 and Bard Peripheral Vascular, Inc., an
16 Arizona corporation,
17 Defendants.
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19 The parties have submitted deposition excerpts in advance of trial. This order will
20 set forth the Court's ruling on objections contained in some of these excerpts. The order
21 will identify objections by the number of the deposition page on which they appear. If
22 more than one objection appears on a page, the order will identify the line on which the
23 objection starts. Where an objection is sustained, the order will identify the page and
24 lines that should be omitted, but if no lines are identified, the objection is sustained with
25 respect to all designated testimony on that page.

26 A. Dr. Brandon Kang.

27 1. 15 – overruled.

28 2. 31 – overruled.

- 1 3. 37 – overruled.
- 2 4. 39 – overruled.
- 3 5. 42 – overruled.
- 4 6. 45:11 – overruled.
- 5 7. 45:17 – overruled.
- 6 8. 47 – overruled.
- 7 9. 50:23 to 53:9 – sustained. The testimony ventures beyond the treatment of
- 8 Ms. Booker, and effectively constitutes opinion testimony by Dr. Kang
- 9 regarding the G2 filter. Such testimony cannot be used unless disclosed as
- 10 expert opinion testimony under Rule 26(a)(2).
- 11 10. 54:11 – overruled.
- 12 11. 54:16 – overruled.
- 13 12. 55 – overruled.
- 14 13. 56:18 to 57:1 – sustained. The testimony ventures beyond the treatment of
- 15 Ms. Booker, and effectively constitutes opinion testimony by Dr. Kang
- 16 regarding proper disclosures to physicians. Such testimony cannot be used
- 17 unless disclosed as expert opinion testimony under Rule 26(a)(2).
- 18 14. 59 – overruled.
- 19 15. 72 – overruled.
- 20 16. 81 – overruled.
- 21 17. 100 – overruled.
- 22 18. 123 – overruled.
- 23 19. 129 – overruled.
- 24 20. 135:20 to 137:2 – excluded by Court’s ruling on motion in limine.
- 25 21. 168 – overruled. This is not expert opinion.
- 26 22. 170:18 to 171:6 – sustained. The testimony ventures beyond the treatment
- 27 of Ms. Booker, and effectively constitutes opinion testimony by Dr. Kang
- 28

1 regarding Bard filters. Such testimony cannot be used unless disclosed as
 2 expert opinion testimony under Rule 26(a)(2).

3 B. Patrick McDonald.

- 4 1. 171:18 to 174:22 – sustained. The questioning concerns the FDA warning
 5 letter which the Court has largely excluded. *See* Doc. 10258. If Plaintiff
 6 makes the required showing for topics 3, 7, or 8 of the letter (*id.* at 6), and
 7 this testimony relates to those topics, Plaintiff may again raise this
 8 deposition testimony with the Court.
- 9 2. 175:20 to 178:3 – sustained. Foundation, 602. Also, the witness has no
 10 knowledge of the document and the questions are not evidence. 178:4-17
 11 should also be excluded.
- 12 3. 182 – overruled.
- 13 4. 192:4-25, 193:23 to 194:3 – sustained. The questioning concerns the FDA
 14 warning letter which the Court has largely excluded. *See* Doc. 10258. If
 15 Plaintiff makes the required showing for topics 3, 7, or 8 of the letter (*id.* at
 16 6), and this testimony relates to those topics, Plaintiff may again raise this
 17 deposition testimony with the Court.
- 18 5. 194:18 to 195:10 – sustained. Relevancy.
- 19 6. 201:15 to 202:9 – sustained. Beyond scope given above rulings.

20 C. Carol Vierling.

- 21 1. 37 – overruled.
- 22 2. 78 – overruled.
- 23 3. 87 – overruled.
- 24 4. 88:9 – overruled.
- 25 5. 88:20 – overruled.
- 26 6. 89:4 – overruled.
- 27 7. 97 – overruled.
- 28 8. 98 – overruled.

- 1 9. 99:8-11 – sustained. Relevancy. The question is not evidence.
- 2 10. 99:22 – overruled.
- 3 11. 100 – overruled.
- 4 12. 101:1 – overruled.
- 5 13. 101:11 – overruled.
- 6 14. 101:18 – overruled.
- 7 15. 105 – sustained. Relevancy. The question is not evidence.
- 8 16. 106 – overruled.
- 9 17. 110:22 to 111:6 – sustained. 403.
- 10 18. 130 – overruled.
- 11 19. 139 – overruled.
- 12 20. 147:3-13 – sustained. Relevancy. The questions are not evidence.
- 13 21. 148 – overruled.
- 14 22. 156 – overruled.
- 15 23. 167 – overruled.
- 16 24. 184 – overruled in light of Bard’s withdrawal.
- 17 25. 186 – overruled.
- 18 26. 192 – no evidentiary objection stated.
- 19 27. 197 – overruled.
- 20 28. 205 – overruled.
- 21 29. 206 – overruled.
- 22 30. 213:4 – overruled.
- 23 31. 2131:20 – overruled.
- 24 D. Jack Sullivan.
- 25 1. 436 – overruled.
- 26 2. 442 – overruled.
- 27 3. 443 – overruled.
- 28 4. 447:1, 8 – overruled.

- E. Salil Patel.

- Dated this 19th day of March, 2018.

Daniel G. Campbell

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